

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34**

HARTFORD AREAS RALLY TOGETHER, INC.

Employer

and

UNITED AUTO WORKERS INTERNATIONAL
UNION, REGION 9A, AFL-CIO

Petitioner

Case No. 34-RC-1996

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.¹ Pursuant to Section 3(b) of the Act, the Board has delegated its

¹ In its post-hearing brief, the Employer claims that the Region improperly refused to grant its request for a postponement of the hearing beyond November 6, 2002, and moves to reopen the hearing so that it can present additional evidence bearing on the jurisdictional issue. The Employer's claim is premised on its assertion that although an envelope containing a copy of the Petition and the Notice of Representation Hearing was admittedly received by the Employer on Friday, October 25, 2002, the envelope remained unopened until Thursday, October 31, when its Executive Director returned from traveling out of state. As a result of this delay, the Employer first retained its counsel in this matter, a law firm specializing, inter alia, in the practice of labor law, on Friday, November 1. This assertedly provided insufficient time for the Employer's counsel to adequately prepare for the scheduled hearing on Monday morning, November 4. While acknowledging the Region's willingness to postpone the hearing until November 6, the Employer's counsel asserted that he was unavailable on that date.

I find no merit to the Employer's request to reopen the record. In this regard, the Employer does not dispute that a copy of the Petition and the Notice of Representation Hearing was also received by the Employer pursuant to a facsimile transmission on October 25. Moreover, the Employer's claim that the envelope containing the Petition and Notice of Representation Hearing remained unopened until October 31 is unsupported by any record evidence. Indeed, that claim is inconsistent with evidence the Employer proffered during the hearing that its sole office employee, Adam Davis, acts in a confidential capacity to the Executive Director, which would presumably include opening and reviewing incoming mail and faxes. The Employer also offered no explanation as to why it did not avail itself of the Region's additional offer to delay the start of the hearing until 1:00 pm on November 4 in order to accommodate its counsel's desire for additional time to prepare for the hearing, nor has it proffered any evidence or claim that other members of the firm were not available to represent it on November 6. Finally, the Employer has failed to specify the additional evidence it would proffer at a reopened hearing. Accordingly, the Employer's request to reopen the hearing is denied.

authority in this proceeding to the undersigned. Upon the entire record in this proceeding, I find that: the hearing officer's rulings are free from prejudicial error and are affirmed; and the labor organization involved claims to represent certain employees of the Employer.

United Auto Workers International Union, Region 9A, AFL-CIO (herein called Petitioner) seeks to represent a unit consisting of four organizers, two counselors, and one office employee employed by Hartford Areas Rally Together, Inc. (herein called the Employer) at its sole facility located in Hartford, Connecticut. Although otherwise in accord as to the scope and composition of the unit, the Employer, contrary to Petitioner, would exclude the office employee on the grounds that he is a confidential employee. The Employer further asserts that the Board should decline to exercise jurisdiction in this matter because the Employer's operations have an insufficient impact on interstate commerce. For the reasons noted below, I find that the Board should not assert jurisdiction over this Employer, and I have dismissed the petition.²

The Employer's Purpose and Structure

The Employer, a non-profit charitable corporation under Section 501(c)(3) of the Internal Revenue Code, engages in grassroots community organizing activities limited to the southern portion of the City of Hartford, Connecticut. This generally involves identifying neighborhood leaders and empowering them to speak on their own behalf regarding neighborhood issues. The Employer's Constitution/By-laws specify its "purpose" is to "unite all people within its boundaries in an organization that will help equip people with the skills and expertise needed to effectively address issues and provide a structure through which people can define and act upon common problems". The Employer's Certificate of Incorporation states that it will engage in the following activities for "charitable and educational purposes": (1) present a united and responsible voice for members, individuals and organizations in HART, Inc. neighborhoods; (2) bring together all people and groups within the HART, Inc. neighborhoods to examine, inspect, identify, isolate, and resolve mutual problems relating to the quality of life in Greater Hartford generally and in those neighborhoods specifically; (3) establish a true

² In light of my determination herein, it is unnecessary to resolve the remaining issue concerning the alleged confidential status of the office employee.

opportunity for poor people to speak with a united voice; (4) combat crime and juvenile delinquency; (5) initiate programs for health and safety; (6) form, aid, assist, direct, and support other organizations, institutions, agencies, societies, corporations or associations organized for the above purposes; and (7) secure human rights established and guaranteed by law regardless of race, color, creed, age, sex, or national origin. The Certificate of Incorporation further specifies that no part of its assets or earnings shall inure to the benefit of any member, officer or director, except for the payment of reasonable compensation for services rendered; that all property and assets shall be devoted exclusively to its charitable, educational and scientific purposes; and that it shall not attempt to influence legislation or participate in any political campaign on behalf of any candidate. The Certificate of Incorporation specifically permits the Employer to exercise any and every power that a non-stock corporation organized under Connecticut law for charitable, educational or scientific purposes can have or exercise.

The Employer's Membership and Hierarchy

The Employer's membership consists of "neighborhood groups" whose efforts are consistent with the Employer's goals and purposes. However, membership is prohibited for any organization whose sole purpose is to support or run candidates for political office, or any incumbent or candidate for political office. The Board of Directors consists of the five elected officers (President, Vice-President, Recording Secretary, Treasurer, and Corresponding Secretary), two representatives from each member organization, four at-large representatives, and four trustees. Reporting directly to the Board of Directors is Executive Director Linn McGlade, who appears to have overall responsibility for the Employer's operations. Reporting directly to McGlade is Lead Organizer Dulcie Giadone, who directly oversees the work performed by the organizers; two counselors in the Employer's Home Ownership Made Easy (HOME) program; and the office employee, Adam Davis, who answers the phone, processes the payroll, and maintains files and records.

Employees

There are two types of organizers – block watch and education. The block watch organizers are responsible for assisting in the formation of local block watch groups, and assisting existing block watch groups to address local issues through training and leadership development. Those issues addressed by the block watch groups assisted by the Employer's block watch organizers include traffic, crime, and commercial development. However, the block watch organizers do not directly represent or speak on behalf of the block watch groups. Rather, they directly assist the local block watch leaders by providing research or other advice. The education organizer performs a similar role as the block watch organizers. However, the work is limited to assisting parents in addressing issues in local schools. Counselors in the HOME program assist first time low income home buyers through the entire process of purchasing a home. This includes providing workshops, classes and individual financial counseling prior to the purchase of a home, and post-purchase financial advice relating to home ownership.

Income and Expenses

Although Executive Director McGlade testified that the Employer's budgeted income for calendar year 2002 is estimated at \$480,000, she provided examples totaling only \$365,000 from the following sources: \$145,000 from the City of Hartford through a Community Development Block Grant provided by the Federal government; \$200,000 in contributions from private sources, such as corporations, foundations, charitable organizations, and grants; and \$20,000 from local fundraising through the publication of a community services directory. Approximately \$50,000 of the contributions from private sources comes directly from outside the State of Connecticut.³

³ Although not entirely clear, it appears that certain banks that finance mortgages for the low income home buyers who are referred through the Employer's HOME program refund the closing fee to the Employer. The record does not reflect how exactly that occurs or how much money is involved.

The Employer's expenses consist primarily of personnel costs, rent, office operations, and professional fees. For calendar year 2002, it will have spent approximately \$10,000 to lease office equipment from a company directly outside the State of Connecticut, and purchased \$5,000 in office supplies directly from outside the State of Connecticut.

Applicable Legal Standard

It is well established that the Board exercises jurisdiction over nonprofit charitable organizations. *Lighthouse for the Blind of Houston*, 244 NLRB 1144 (1979). As the Employer correctly notes, the only basis on which the Board will decline to exercise jurisdiction over a nonprofit charitable organization that otherwise satisfies the Board's monetary jurisdictional standards is when "its activities do not have a sufficient impact on interstate commerce to warrant the exercise of the Board's jurisdiction." *St. Aloysius Home*, 224 NLRB 1344, 1345 (1976). In *Ohio Public Interest Campaign*, 284 NLRB 281 (1987), where the employer was a nonprofit corporation engaged in consumer lobbying that clearly met the Board's monetary jurisdictional standards, the Board nonetheless declined to exercise jurisdiction because "the nature of [its] operations and impact appear to be almost, if not exclusively, limited to matters concerning issues of public concern affecting Ohio residents and without a general impact on interstate commerce."

Analysis and Conclusion

Although the Employer satisfies the Board's monetary jurisdictional standards,⁴ I conclude, in accordance with the Board's decision in *Ohio Public Interest Campaign*, *supra*, where the employer therein similarly met the Board's monetary jurisdictional standards, that the Board should not assert jurisdiction over this Employer. In reaching this conclusion, I note the absence of any evidence that the Employer's operations have any impact on interstate commerce. To the contrary, the record clearly establishes that the Employer's operations and impact are limited exclusively to a portion of the City of Hartford. In this regard, Executive Director McGlade testified without contradiction that she was unaware of any issues that the Employer deals with that involve matters

⁴ The Employer's annual revenues exceed the \$250,000 jurisdictional standard applied to social services organizations. *Hispanic Federation for Development*, 284 NLRB 500 (1987); *Child and Family Service*, 315 NLRB 13 (1994).

outside the City of Hartford. Moreover, given the nature of the work performed by the Employer's employees, and noting the complete absence of any commercial aspect to the Employer's operations, there is little if any likelihood that a labor dispute involving those employees would result in any impact on interstate commerce. Under these circumstances, the nature of the Employer's operations and impact appear to be almost, if not exclusively, limited to matters concerning issues of public concern affecting Hartford residents and without a general impact on interstate commerce.⁵

Accordingly, I find that the Employer is not subject to the Board's jurisdiction, and I shall dismiss the petition.

ORDER

IT IS HEREBY ORDERED that the petition filed in this matter is dismissed.

Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by December 2, 2002.

Dated at Hartford, Connecticut this 18th day of November, 2002.

/s/ Peter B. Hoffman

Peter B. Hoffman, Regional Director
National Labor Relations Board
Region 34

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⁵ There is no merit to the Petitioner's contention that the Employer's involvement in facilitating real estate transactions, which it claims usually results in transmitting real estate funds across state lines, establishes its impact on interstate commerce. See *Seattle Real Estate Board*, 130 NLRB 608 (1961), where the Board declined to exercise jurisdiction over real estate brokers because their services are provided at the local level and "have at best only a remote relationship to interstate commerce". In reaching this conclusion, the Board specifically acknowledged the likelihood that a real estate transaction might result in financing by out-of-State firms and the interstate transmittal of moneys, but noted that the prime function of the real estate broker is to bring together a buyer and seller, after which the broker has no further involvement in the monetary aspects of the transaction. Id. at 610.